

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ANTHONY GAY,

Plaintiff,

v.

KRISTIN KWASIEWSKI  
HAMMERSLEY, et al.,

Defendants.

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Civil No. **08-059-DRH**

**REPORT and RECOMMENDATION**

**PROUD, Magistrate Judge:**

This Report and Recommendation is respectfully submitted to Chief Judge David R. Herndon pursuant to 28 U.S.C. §§636(b)(1)(B) and (C).

Plaintiff Anthony Gay is an inmate in the custody of the Illinois Department of Corrections. He originally filed this suit in state court in Alexander County. On January 28, 2008, defendants filed a notice of removal, **Doc. 3**. Now before the court is plaintiff's Objection to Defendants' Notice of Removal, which the court construes as a Motion to Remand. (**Doc. 10**).

Plaintiff's original state court complaint alleged only state law causes of action for medical malpractice and conspiracy. **See, Doc. 3, Ex. 1**. Plaintiff filed a motion for leave to amend to add a claim for violation of his Eighth Amendment rights under 42 U.S.C. §1983. The state court granted leave to amend on December 26, 2007. The amended complaint is at **Doc. 3, Ex. 6**. Within thirty days of receipt of the order permitting the amendment, defendants filed their notice of removal, alleging federal jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

The basis of plaintiff's objection is that his amended complaint sets forth state law claims for medical malpractice and conspiracy, as well as a federal law claim for deliberate indifference

to his serious medical needs. This is not a valid ground for remand.

This court has original jurisdiction of the claim for deliberate indifference pursuant to 28 U.S.C. §§ 1331 and 1343. This court has supplemental jurisdiction of the state law claims pursuant to 28 U.S.C. § 1367. Removal was proper.

**Recommendation**

This Court recommends that plaintiff's Objection to Defendants' Notice of Removal, construed as a Motion to Remand (**Doc. 10**) be **DENIED**.

Objections to this Report and Recommendation must be filed on or before **March 10, 2008**.

**Submitted: February 21, 2008.**

s/ Clifford J. Proud  
**CLIFFORD J. PROUD**  
**U. S. MAGISTRATE JUDGE**